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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,378	09/21/2005	Ethan Vickery	VICE:005US	3385
33425 7590 07/08/2009 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
ARK, DARREN W				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,378

Applicant(s)

VICKERY, ETHAN

Examiner

Darren W. Ark

Art Unit

3643

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13 is/are pending in the application.
- 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. Claim 13 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/25/2007. The limitation "the receptacle having one or more integrally formed protrusions" is directed to non-elected Species VI represented by Fig. 5 which shows protrusions integrally formed with the receptacle. Elected Species IV represented by Fig. 3 discloses nut and bolt assemblies with washers which are not formed integrally with the receptacle since they are separate and discrete parts.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 11 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Griswold et al. 6,508,377.

Griswold et al. discloses providing a plastic bait station (16, 23; see cross section in Figs. 4, 5) comprising a lid (23) and a base (16) having a bottom (18) in which openings (openings defined between 27-29 & 33) are positioned; providing a receptacle (11) having protrusions (parts of 14) configured to extend through the openings (see Fig. 5) in the bottom of the plastic bait station; placing pre-formed weighted material (metallic weighted material inside 12; see Fig. 4) in the receptacle; placing bait (34) in the plastic bait station; securing the plastic bait station to the receptacle (see Fig. 5), the securing including causing the protrusions of the receptacle to extend through the openings in the bottom of the plastic bait station.

4. Claims 11, 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jalbert 3,708,905.

Jalbert discloses providing a plastic bait station (see col. 1, lines 32-35) comprising a lid (70) and a base (4, 6, 8, 10, 12, 14) having a bottom (18, 36) in which openings (see Fig. 7) are positioned; providing a receptacle (100) having protrusions (118) configured to extend through the openings (see Fig. 7) in the bottom of the plastic bait station; placing pre-formed weighted material (rocks or other suitable material) in the receptacle; placing bait (see col. 4, lines 13-15) in the plastic bait station; securing the plastic bait station to the receptacle (see Fig. 7), the securing including causing the protrusions of the receptacle to extend through the openings in the bottom of the plastic bait station.

In regard to claim 12, Jalbert discloses the lid (70) being integrally hinged (via 76) to the base (4, 6, 8, 10, 12, 14).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griswold et al. 6,508,377 in view of Loebbert 5,150,810.

Griswold et al. does not disclose the lid being integrally hinged to the base. Loebbert discloses a plastic bait station comprising a lid (3 of polyethylene) and a base (1 of polyethylene, 2 of polyethylene), wherein the lid (3) is integrally hinged (via 18) to the base (2). It would have been obvious to one of ordinary skill in the art to modify the device of Griswold et al. such that the lid is integrally hinged to the base in view of Loebbert in order to provide a material for the bait station which can be molded in many different colors, sizes and configurations and also to provide an integrally connected lid and base so that the lid is not easily disassociated from the base.

7. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Loebbert 5,150,810.

Pruitt discloses providing a bait station comprising a lid and a base (32), the base having a bottom on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with lateral groove) positioned therein, the projections of the base bottom configured to extend through the openings in the receptacle; placing pre-formed

weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14), the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but does not disclose a plastic bait station. Loebbert discloses a plastic bait station comprising a lid (3 of polyethylene) and a base (1 of polyethylene, 2 of polyethylene), wherein the lid (3) is integrally hinged (via 18) to the base (2). It would have been obvious to one of ordinary skill in the art to make the device of Pruitt out of plastic in view of Loebbert in order to provide a material for the bait station which can be molded in many different colors, sizes and configurations and also to provide an integrally connected lid and base so that the lid is not easily disassociated from the base.

Pruitt and Loebbert disclose the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but do not disclose the base having a bottom with openings or the receptacle with protrusions. It would have been an obvious matter of design choice to make the base bottom with the openings and the receptacle with the protrusions, since such a modification would have involved a mere reversal of parts. A reversal of parts is generally recognized as being within the level of ordinary skill in the art. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955).

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Griswold et al. 6,508,377.

Pruitt discloses providing a bait station comprising a lid and a base (32), the base having a bottom on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with lateral groove) positioned therein, the projections of the base bottom configured to extend through the openings in the receptacle; placing pre-formed weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14), the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but does not disclose a plastic bait station. Griswold et al. discloses a plastic bait station (see Fig. 4 wherein lid 23, base 11 and receptacle 16 are all shown as being made of plastic). It would have been obvious to one of ordinary skill in the art to make the device of Pruitt out of plastic in view of Griswold et al. in order to provide a material for the bait station which can be molded in many different colors, sizes and configurations.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Griswold et al. 6,508,377 as applied to claim 11 above, and further in view of Loebbert 5,150,810.

Pruitt and Griswold et al. do not disclose the lid being integrally hinged to the base. Loebbert discloses the lid (3) being integrally hinged (via 18) to the base (2). It would have been obvious to one of ordinary skill in the art to modify the device of Pruitt and Griswold et al. such that the lid is integrally hinged to the base in view of Loebbert

in order to provide a material which can be molded in many different colors, sizes and configurations.

10. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossen 6,513,283 in view of Pruitt 5,897,018 or Morell et al. 3,343,744.

Crossen discloses a method of securing a bait station (128) comprising providing a plastic bait station having a bottom in which an opening (126) is positioned; providing a receptacle (120) having a protrusion (1/4 inch bolt) to extend through the opening; placing pre-formed weighted material in the receptacle (123; 123 is preformed in that it is formulated to be harder/more dense than periphery of 120; no particular method step being recited) in the receptacle (120); securing the plastic bait station to the receptacle, the securing including causing the protrusions of the receptacle to extend through the opening in the bottom of the plastic bait station, but does not disclose the plastic bait station having a bottom with openings or a receptacle having protrusions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bait station such that it has a plurality of openings and the receptacle such that it has a plurality of protrusions, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because the utilization of a plurality of openings and protrusions would allow the connection between the bait station and receptacle to be stronger and more evenly held together at a plurality of locations. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Crossen discloses forming the receptacle concurrently with the weighted material, but does not disclose placing pre-formed weighted material in the receptacle. Pruitt generally discloses a device comprising a lid and a base (32), the base having a bottom on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with lateral groove) positioned therein, the projections of the base bottom configured to extend through the openings in the receptacle; placing pre-formed weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14). Morell et al. discloses a box construction is of a type suitable for use as a bait box adapted to catch rodents or other similar animals and that prior boxes required bricks, stones, or other weight object to placed thereupon in order to prevent the box from being dragged away by the animal being sought or moved by a strong wind. Morell et al. discloses the box (10) comprising a lid (23), a base (generally 12, 14, 30, 31), and a receptacle (A) for receiving a preformed weighted material (compartment A adapted to be filled with sand, gravel, or the like to provide the necessary weight to prevent the set-up box from being moved either by wind or by an animal seeking the bait which is normally placed within central compartment B). It would have been obvious to one of ordinary skill in the art to modify the method of Crossen such that pre-formed weighted material is placed in the receptacle in view of Pruitt or Morrell et al. in order to provide the user with the ability to fill the receptacle at the time of use with the desired type of material having the density property necessary to weight the bait station and keep it in place.

11. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossen 6,513,283 in view of Faucillon 4,486,973.

Crossen does not disclose the plastic bait station having a bottom with openings or a receptacle having protrusions or placing preformed weighted material in the receptacle. Faucillon discloses a bait station having a lid (15), a base (2) having a bottom with openings (26), and a receptacle (1) with protrusions (28, 27) configured to extend through the openings in the bottom of the base, and wherein a pre-formed weighted material (concrete blocks 19) is placed in the receptacle. It would have been obvious to a person of ordinary skill in the art to modify the method of Crossen such that the base and receptacle have openings and protrusions and that a pre-formed weighted material is placed in the receptacle in view of Faucillon in order to provide a plurality of attachment points for the bait station and receptacle to more evenly hold the separate bait station and receptacle together and also to allow the user to add as much weight as necessary before deployment of the bait station.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harris 5,549,214 discloses closure devices comprising a base (1) and a lid (2), wherein the lid (2) has a closure device provided by a flap (10) formed from a first portion (11) which is flexibly connected to the lid (2) by an integral strip (12 which acts like a hinge) of the plastics moulding from which the lid is formed. Cuccharia

5,503,292 discloses a plastic device comprising a base (12) with a bottom having openings (defined between 31, 33 & 16) and a receptacle (14) with projections (39, 41).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/
Darren W. Ark
Primary Examiner
Art Unit 3643

DWA